

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

09 VIRGIL M. QUINN, ) CASE NO. C05-0468-TSZ  
10 Plaintiff, )  
11 v. ) REPORT AND RECOMMENDATION  
12 GREYHOUND BUS STATION, )  
13 Defendant. )  
\_\_\_\_\_  
)

15 Plaintiff Virgil Quinn, proceeding *pro se*, has submitted an *in forma pauperis* application  
16 and a proposed complaint. (Dkt. 1) Plaintiff's proposed complaint is directed against the  
17 Greyhound Bus Station in Seattle. Plaintiff alleges that in 2000, he bought three bus tickets to  
18 Portland for himself and two others, but someone "took the ticket[s] and cashed them in and the  
19 ticket lady lied and said he didn't and wouldn't give me my money back." Plaintiff also alleges  
20 that his suit case is stuck in the luggage department, he is being asked to pay \$25.00 to get his  
21 luggage out, and he already paid \$65.00 for a bus ticket to Everett. As relief, plaintiff requests  
22 a return of the money for the three bus tickets to Portland, his luggage, and his money for the bus  
23 ticket to Everett.

24 A plaintiff may be denied leave to proceed *in forma pauperis* if it appears from the face  
25 of a proposed complaint that the action is frivolous or without merit. *Tripathi v. First Nat'l Bank*  
26 & Trust

## REPORT AND RECOMMENDATION

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01 § 1915(2)(B) to dismiss actions that are frivolous or fail to state a claim on which relief may be  
02 granted. An action may be dismissed as frivolous where a defense is complete and obvious from  
03 the face of the pleadings. *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9<sup>th</sup> Cir. 1984).

04 This Court may only hear plaintiff's action if it has jurisdiction over the subject matter of  
05 the complaint. Federal subject matter jurisdiction can be based on the existence of a federal  
06 question or diversity of citizenship between the parties where the amount in controversy exceeds  
07 \$75,000. *See* 28 U.S.C. §§ 1332(a) and 1441(b). Based on the documents submitted, there is no  
08 basis for this Court to conclude that it has subject matter jurisdiction over plaintiff's complaint.

09 First, plaintiff's complaint does not present a federal question. Although plaintiff's  
10 complaint was submitted on a form used for claims under 42 U.S.C. § 1983, he has not alleged  
11 a claim that may conceivably be brought under that statute. An action under 42 U.S.C. § 1983  
12 may be brought if the plaintiff is deprived of his federal or constitutional rights by a person who  
13 is acting under color of state law. Here, plaintiff has not alleged facts showing the deprivation of  
14 his federal or constitutional rights. The Greyhound Bus Station is also not a "person" subject to  
15 suit under this statute. In addition, private parties generally do act under color of state law. *See*  
16 *Price v. Hawaii*, 939 F.2d 702, 707-08 (9<sup>th</sup> Cir. 1991). An exception to this rule may exist when  
17 there is a conspiracy between state officials and a private party. *DeGrass v. City of Glendora*, 207  
18 F.3d 636, 647 (9<sup>th</sup> Cir. 2000). However, plaintiff's complaint does not contain any allegations  
19 regarding such a conspiracy.

20 Plaintiff may be attempting to bring claims based on state law, such as conversion.  
21 However, federal courts generally may hear claims based on state law if: (1) the plaintiff and the  
22 defendant are citizens of different states; and (2) the amount in controversy is over \$75,000.  
23 Because the amount in controversy alleged by plaintiff is clearly less than that \$75,000, there is  
24 no basis for this Court to exercise jurisdiction over any state law claims that plaintiff may be  
25 attempting to allege.

26 Accordingly, because of the deficiencies in plaintiff's proposed complaint, his *in forma*

01 *pauperis* application should be denied and this action dismissed without prejudice. *See* 28 U.S.C.  
02 § 1915(e)(2)(B) (requiring *sua sponte* dismissal); *Wong v. Bell*, 642 F.2d 359, 361-62 (9th Cir.  
03 1981) (permitting *sua sponte* dismissal). **If plaintiff believes that the deficiencies outlined  
04 herein can be cured by an amendment to his Complaint, he should lodge an Amended  
05 Complaint as a part of his objections, if any, to this Report and Recommendation.** A  
06 proposed Order accompanies this Report and Recommendation.

07 DATED this 30th day of March, 2005.

08 s/ Mary Alice Theiler  
09 United States Magistrate Judge  
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